

RAYMOND D. DILLEY

IBLA 84-391      Decided June 11, 1985

Appeal from a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, declaring the Brandy Line Nos. 1, 2, 3, 4, 9, and 10 placer mining claims null and void. F-54801 through F-54806.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  
-- Withdrawals and Reservations: Effect of

A mining claim is properly declared null and void if, at the time of location, the land is withdrawn from appropriation under the mining laws. Once land has been withdrawn from mineral entry, it remains withdrawn until the withdrawal is formally revoked. It is immaterial whether the lands are or will be used for the purpose for which they are withdrawn.

APPEARANCES: Raymond D. Dilley, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Raymond D. Dilley has appealed from a March 1, 1984, decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), declaring the Brandy Line Nos. 1, 2, 3, 4, 9, and 10 placer mining claims null and void and rejecting the mining claim recordation filings for those claims. F-54801 through F-54806.

The subject claims were located in May and June 1979 along Buckskin Creek in secs. 35 and 36, T. 8 S., R. 28 E., Fairbanks Meridian, and sec. 32 of T. 28 N., R. 17 E., Copper River Meridian. Copies of the location notices were filed with BLM on July 24, 1979, and affidavits of assessment work performed were filed in 1980, 1981, 1982, and 1983.

On September 12, 1972, the Department withdrew all lands within the protracted surveyed sections which are wholly or in part within 1 mile of the mean high water mark of the bank of Buckskin Creek and all islands and islets within that creek for the townships within which appellant's claims are located from, among other things, "location and entry under the mining laws, 30 U.S.C. Ch. 2." Public Land Order No. (PLO) 5250, 37 FR 18730, 18732 (Sept. 15, 1972).

Appellant bases his appeal "on the fact that PLO has not reserved this land for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers." The status plats indicate

the land at issue has not been recommended for inclusion in the National Park, Forest, Wildlife Refuge, or Wild and Scenic River System, although the stated purpose of the withdrawal was to protect the land for its possible inclusion in one of those systems. See 37 FR at 18733. Nevertheless, PLO 5250 expressly withdrew the land from location under the mining laws, and this withdrawal has not been revoked. <sup>1/</sup>

[1] It is well established that a mining claim located on land previously withdrawn from location is null and void ab initio. See Samuel P. Speerstra, 78 IBLA 343 (1984), and cases cited therein. Once land has been withdrawn from mineral entry, it remains withdrawn until the withdrawal is formally revoked. It is immaterial whether the lands are or have been used for the purpose for which they are withdrawn. Id. These general principles were explained in Vincent Barnard, 66 IBLA 100, 104-05 (1982):

Even where the purpose of a withdrawal cannot be met, it generally bars disposal of the land while it remains in effect. See Robert A. Adams, 57 IBLA 370 (1981); Roy Leonard Wilbur, 61 I.D. 157 (1953). Restoration of land from withdrawal does not operate to validate retroactively applications or entries made during the withdrawal. See Paul D. Tony, 43 IBLA 245 (1979); J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976); Roy Leonard Wilbur, *supra*. To hold otherwise would make withdrawals an ineffective land management tool since those seeking entries barred by the withdrawal would be encouraged to enter the land anyway if they believed that their entries could be validated by the future revocation of the withdrawal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge

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<sup>1/</sup> The State of Alaska filed selection applications for lands that include appellant's claims. BLM has issued decisions tentatively approving these applications for certain lands, but the land within appellant's claims has also been withdrawn from State selection by PLO 5250.

